STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 7, 2000
v	No. 216726 Ottawa Circuit Court
CARLTON DARNELL TOWNS, Defendant-Appellant.	LC No. 98-021952-FH

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Defendant was convicted by jury of possession with intent to deliver more than 50 grams but less than 225 grams of cocaine. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). He was sentenced as a second offender, MCL 333.7413(2); MSA 14.15(7413)(2), to a prison term of 144 to 480 months. Defendant appeals by right. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence at trial that defendant knowingly possessed the cocaine at issue. In reviewing the sufficiency of the evidence, this Court "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). With regard to the element of possession, this Court has explained:

> A person need not have physical possession of a controlled substance to be found guilty of possessing it. Possession may be either actual or constructive, and may be joint as well as exclusive. The essential question is whether the defendant had dominion or control over the controlled substance. A person's presence at the place where the drugs are found is not sufficient, by itself, to prove constructive possession; some additional link between the defendant and the contraband must be shown. However, circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. [*People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998) (citations omitted).]

As our Supreme Court explains, "constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband." *Wolfe, supra* at 521.

Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence from which a rational trier of fact could find that defendant constructively possessed the large bag of cocaine at issue, which the police seized from under the basement stairs of the duplex where an informant had executed a controlled buy of cocaine. According to the testimony of the informant, defendant was the only person involved in the sale of drugs from the basement of the duplex and the informant observed large amounts of cocaine in the basement during the controlled buy. The informant testified that during the sale defendant told him "if [he] knew anybody else that wanted anything to let [defendant] know." The evidence also established that defendant, who attempted to prevent police officers from entering the residence to execute the search warrant, was found with the marked money from the controlled buy in his possession. Considering the totality of the circumstances, this is sufficient evidence to link defendant to the cocaine seized from the residence, and thus to support a finding of constructive possession. *Wolfe, supra* at 521.

Defendant also argues that during closing argument the prosecutor repeatedly mischaracterized the informant's testimony about the bags of cocaine that he saw during the controlled buy and that the prosecutor improperly vouched for the informant's veracity. Because defendant failed to object to the allegedly improper remarks, this issue is not properly preserved. Appellate review of allegedly improper prosecutorial remarks is precluded if the defendant fails to timely object unless a curative instruction could not have cured the error or a failure to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). "A miscarriage of justice will not be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely curative instruction." *People v Rivera*, 216 Mich App 648, 651-652; 550 NW2d 593 (1996).

Having reviewed the prosecutor's allegedly improper statements, we find that even if any of the remarks were improper, any prejudicial effect from the remarks was not so great that it could not have been cured by an appropriate instruction. *Stanaway, supra* at 686-687 (had there been a timely objection where the prosecution was either impermissibly arguing facts not in evidence or was vouching for a witness's credibility, the trial court could have cautioned the prosecutor and instructed the jury, dispelling any misleading inference); *People v McElhaney*, 215 Mich App 269, 284; 545 NW2d 18 (1996) (prompt admonishment to the jury regarding its role as factfinder was sufficient to cure any error caused by the prosecutor's vouching for the credibility of a witness). Thus, we find no miscarriage of justice.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins